

# EXHIBIT A

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VOL: I

PAGES: 1-295

2

EXHIBITS: 1-15

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UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF MASSACHUSETTS

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SHEILA J. PORTER, \*

7

Plaintiff \*

-vs-

\* Civil Action

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ANDREA CABRAL; SUFFOLK COUNTY \* No. 04-11935-DPW

SHERIFF'S DEPARTMENT; SUFFOLK \*

9

COUNTY and CORRECTIONAL MEDICAL \*

SERVICES, INC., \*

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Defendants \*

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DEPOSITION OF ANN MACK, a witness

14

called on behalf of the Plaintiff, in the

above-captioned matter, said deposition being

15

taken pursuant to the Federal Rules of

Civil Procedure, before Patricia M.

16

McLaughlin, a Certified Shorthand Reporter and

Notary Public in and for the Commonwealth of

17

Massachusetts, at the offices of Goodwin Procter

LLP, Exchange Place, Boston, Massachusetts, on

18

Tuesday, May 3, 2005, commencing at 10:05 a.m.

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1 on a partner's desk, I can't do anything  
2 about that. I tried to do the best I could  
3 to get it to you in plenty of time for you to  
4 review it before the deposition, and that  
5 will be our position.

6 If you have any further discovery  
7 issues, we can certainly try to work it out  
8 on paper rather than having to bring this  
9 witness back.

10 CROSS-EXAMINATION

11 BY MS. CAULO:

12 Q My name is Ellen Caulo, Deputy General  
13 Counsel. I'm here representing Sheriff  
14 Andrea Cabral, Suffolk County Sheriff's  
15 Department and Suffolk County.

16 What is the obligation of CMS medical  
17 staff to document encounters with inmates?

18 MS. HARVEY: Objection. Beyond the  
19 scope. Go ahead.

20 A Staff are required and instructed on inmate  
21 encounters they are to provide documentation  
22 on the progress note forms. It's supposed to  
23 be dated and timed and clearly outline  
24 through the subjective information, objective

00280

1 findings, any assessment that they identify  
2 in a plan. It should really be provided on  
3 the progress note.

4 Q That's the reference to the acronym, SOAP,  
5 that list?

6 A Yes.

7 Q Mr. Schumacher had introduced Exhibit No. 12  
8 which is a progress note, which you  
9 identified. Is that the document that you  
10 just referred to that a CMS medical employee  
11 should utilize to document encounters with  
12 inmates?

13 A Medical encounters with inmates, yes.

14 Q Should all encounters with inmates be  
15 documented?

16 A We really encourage all encounters. There  
17 are circumstances when an inmate comes up and  
18 he asks for when his medication is going to  
19 be, when he'll start on his new medication,  
20 they wouldn't document that. But if someone  
21 gets involved in evaluating a patient and  
22 there is an assessment that is made, then  
23 they need to document through that SOAP  
24 format their findings.

00281

1 Q Would you expect that an encounter that  
2 included conversations between a CMS medical  
3 staff person and an inmate relating to  
4 injuries that an inmate allegedly sustained  
5 perhaps at the hand of an officer, would that  
6 be something that you would expect would be  
7 recorded and documented in an  
8 interdisciplinary progress note?

9 MS. HARVEY: Objection. Scope.

10 A I think the expectation would be that that  
11 would be documented on a progress note and an  
12 incident report to the county.

13 Q Let me just ask you further about the  
14 interdisciplinary progress note. Once a CMS  
15 medical staff person records what you have  
16 just described, where does this document go?

17 A In the inmate's health record.

18 Q Who maintains that?

19 A We do.

20 Q We being CMS?

21 A Yes.

22 Q Who has access to them?

23 A That's when the confidentiality standard goes  
24 into play, and health services staff only.

00282

1 Q They're maintained by CMS?

2 A And on a need-to-know basis, the Sheriff's  
3 Department may have access, in conjunction  
4 with the administrator or health services  
5 staff.

6 Q When you say in conjunction with the HSA, the  
7 health services administrator, a request  
8 would be put through the HSA to access to an  
9 inmate's medical record?

10 A Yes.

11 Q You just mentioned, Miss Mack, an incident  
12 report. Is that different from the document  
13 that you have just identified as Exhibit  
14 No. 12?

15 A It would be.

16 Q Is an incident report form a form generated  
17 by the correctional facility or by CMS?

18 A Most often the correctional facility.

19 Q And the kinds of things that would be  
20 included in an incident report as compared to  
21 a progress note?

22 A A staff injury, it might be an incident  
23 related to staff or a problem staff had with  
24 correctional officers, something identified

00283

1 on inmate evaluation that would be perceived  
2 as inappropriate or excessive.

3 Incident reports could be a minor  
4 observation of a minor altercation in the  
5 unit. There is a host of things, but it's  
6 more related to the securities side of  
7 things.

8 Q If an inmate reported to a CMS medical staff  
9 person that he or she had been assaulted by  
10 an officer, would you expect that the CMS  
11 medical staff person would record that in  
12 addition to the progress note in an incident  
13 report?

14 MS. HARVEY: Objection. Scope.

15 A We would expect that an incident report be  
16 completed so that we would be certain that  
17 this problem that we had identified was  
18 communicated to corrections in a written  
19 format. It would also be verbally reported  
20 and communicated to the administrator.

21 Q In this case, that would be Donna Jurdak --

22 A Yes.

23 Q -- the health services administrator in this  
24 particular incident?

00284

1 A Yes, and she would review and be privy to any  
2 incident reports that were completed at that  
3 jail.

4 Q Would a failure to document injuries to an  
5 inmate in an inmate's medical record, would  
6 that be something for which discipline may be  
7 imposed on a CMS employee?

8 MS. HARVEY: Objection. Scope.

9 Q Did you understand my question?

10 A Clinicians have a requirement to document  
11 clinical findings if they evaluate a patient.  
12 Those findings need to be noted in the health  
13 record. If a patient was seen at 4 o'clock  
14 in the afternoon with reported injuries, that  
15 encounter needs to be documented, because he  
16 could come down two hours later and have  
17 subsequent problems, and from a clinical  
18 perspective, it could be a big problem if  
19 that previous note was not entered.

20 Q What if information is communicated without  
21 an examination?

22 MS. HARVEY: Objection. Scope.

23 A It depends on the circumstances. Some  
24 information is significant, and it's really a



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1 clinical judgment call. Anything in regards  
2 to the inmate's health and well-being needs  
3 to be documented.

4 Q If an inmate in this case, Rene Rosario, told  
5 the plaintiff, Ms. Porter, that he had been  
6 assaulted by an officer and showed her  
7 injuries through the window of a cell door,  
8 would you have expected that that would have  
9 been recorded in Mr. Rosario, the inmate's,  
10 medical files?

11 MS. HARVEY: Objection. Scope.

12 A Yes.

13 Q Even if an examination was not conducted by  
14 Mrs. Porter?

15 A Even if there wasn't a hands-on examination,  
16 what was observed, whether it was abrasions,  
17 bruises, discoloration, swelling, that needed  
18 to be documented, if, in fact, that's what  
19 was observed.

20 Q And a failure to do something like that or a  
21 failure to do that, would that behavior for  
22 which discipline may be imposed by CMS?

23 MS. HARVEY: Objection.

24 A Lack of documentation may be considered a

00286

1 circumstance around enforcing corrective  
2 action, employing the disciplinary process.

3 Q Perhaps lastly, if the CMS employee shared  
4 confidential medical information about an  
5 inmate with persons other than CMS medical  
6 staff, would that be perhaps grounds for  
7 discipline?

8 A Clearly, clinicians understand the  
9 responsibility around patient confidentiality  
10 and the reporting of information outside of  
11 health services, and in essence, if someone's  
12 health or anything in regards to their  
13 physical findings was communicated outside of  
14 health services, that violates the standard  
15 around confidentiality of care that's in our  
16 policies and procedures, which is specific to  
17 inmate healthcare, and would be a violation  
18 of policy and maybe grounds for discipline.

19 Q One further question. Documenting the  
20 encounters as we have just discussed between  
21 CMS medical staff and an inmate, should that  
22 be done contemporaneously with the encounter  
23 or shortly thereafter?

24 MS. HARVEY: Objection.

00287

1 A Yeah, as soon as possible after the incident.  
2 Again, based on the scenario that I gave  
3 previously, if there was an incident where we  
4 felt that injuries were sustained and there  
5 was some abnormal findings on observation, if  
6 those weren't documented and the provider  
7 that came on evenings came and took the  
8 record and had no knowledge that -- now, this  
9 patient is unconscious and had no knowledge  
10 that this patient was involved in an alleged  
11 altercation or whatever, that could clearly  
12 impact the outcome of that patient's care.  
13 So timeliness in documenting is important.

14 MS. CAULO: Nothing further.

15 CROSS-EXAMINATION

16 BY MS. HARVEY:

17 Q I'm going to follow up with two questions  
18 just for clarification. You were shown  
19 Exhibit 2, which is the CHS evaluations.  
20 Would you expects the CHS evaluations to be  
21 in CMS's personnel file for Sheila Porter?

22 A No, they shouldn't be.

23 Q Why not?

24 A Because evaluations are -- all information

# EXHIBIT B

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VOL: I

PAGES: 1-201

2

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LLP, Exchange Place, Boston, Massachusetts, on

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Friday, May 6, 2005, commencing at 9:40 a.m.

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1 had written out the information. It wasn't  
2 that it had -- it wasn't a standard form, but  
3 using a medical records form versus any other  
4 format of communication was significant to  
5 me.

6 Q And where is that policy written?

7 A There is no policy here --

8 Q When you say here, what do you mean?

9 A There is no policy in S220 that goes to a  
10 medical person or specifically a nurse's  
11 obligation to document in the medical record  
12 observations related to potentially treatable  
13 injuries or harmful injuries to an inmate.

14 I'm talking about my understanding of  
15 what the use of a medical record is, how it  
16 is properly used and how a person who is in  
17 the medical profession for years would know  
18 that that form would be used.

19 Q You're saying that the use of a medical  
20 record form -- by that, I assume you mean the  
21 interdisciplinary progress notes form?

22 A Yes.

23 Q The use of that form for any other purpose  
24 than progress notes as to a patient violates